

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5391 OF 2007

M/s. Aaher Agency			Petitioners
V/s			
Chief Executive Officer, Nashik Peoples			
Coop. Bank Ltd. & Ors...			Respondents.

Mr.Shriram S. Kulkarni, Adv. For the petitioners.

Mr.H.S.Venegavkar, Adv. For respondent No.1.

Mr.M.S.Karnik, Adv. For respondent No.3.

CORAM: A.P.DESHPANDE, J.

17/8/07

PC:

Leave to amend with a view to add the prospective purchase as respondent No.6. Amendment to be carried out forthwith.

Heard learned advocates for respective parties.

ORDER.

Writ petition is allowed.

- i) The auction sale of the petitioner's property held on 1.8.06, wherein the respondent No.3 was the highest bidder, is quashed and set aside.
- ii) The respondent No.6 shall hand over two pay orders bearing Nos.019208 and 019237 each drawn on Shree Mahesh Co-operative Bank Limited, Main Branch, Nashik dated 30.7.07 and 8.8.07 in the sum of Rs.,1,12,25000/- (Rupees One Crore Twelve Lacs & Twenty Five Thousand only) and Rs.4,14,975/- (Rupees

Four Lacs Fourteen Thousand & Nine Hundred Seventy Five only) respectively aggregating to a sum of Rs.1,16,39,975/- (Rupees One Crore Sixteen Lacs Thirty Nine Thousand Nine Hundred Seventy five only) forthwith to respondent No.1-bank on behalf of the petitioner. The respondent No.1-bank accepts the said pay orders towards full and final satisfaction of all its claims against the petitioner and against the mortgaged property. It is declared that after receiving the said sum of Rs.1,16,39,975/- respondent No.1-bank shall not be entitled to receive any amount whatsoever from the petitioner or the respondent No.6.

iii) On en-cashment of pay orders the property mortgaged by the petitioner with respondent No.1-bank shall stand redeemed. On redemption of the mortgage the present petitioner shall executed a sale deed/development agreement of the mortgaged property in favour of respondent No.6 and the respondent No.1-bank shall hand over possession of the property to the respondent No.6. Respondent No.1-bank shall sign the sale deed/development agreement as consenting party.

iv) The bank shall issue no dues certificate and no objection for execution of the sale deed/development agreement immediately on encashment of pay orders.

v) The respondent No.1-bank shall refund an amount of Rs.81 lacs to respondent No.3 which has been deposited by 3rd respondent, within one week from the encashment of the pay orders.

vi) Rule made absolute in above terms. Reasons to follow.

At this stage Shri Karnik, Learned counsel for the respondent No.3 prays for stay of this order for a period of four weeks. In the peculiar

facts of the case I am unable to accede to request made by learned counsel and hence said prayer stands rejected.

17.8.07